

House Study Bill 710 - Introduced

HOUSE FILE _____
BY (PROPOSED COMMITTEE
ON JUDICIARY BILL BY
CHAIRPERSON HOLT)

A BILL FOR

1 An Act relating to controlled substance intoxication in public
2 places, and providing penalties.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 123.91, unnumbered paragraph 1, Code
2 2022, is amended to read as follows:

3 Unless otherwise provided by law, a person who has been
4 convicted in a criminal action in any court of record of
5 a violation of a provision of *this chapter*, except for a
6 violation of *section 123.46* or *124.401H*, or a provision of
7 the laws of the United States or of any other state relating
8 to alcoholic liquors, wine, or beer, and who is thereafter
9 convicted of a subsequent criminal offense against any
10 provision of *this chapter* is guilty of the following offenses:

11 Sec. 2. NEW SECTION. *124.401H Public intoxication —*
12 *controlled substances — notifications — expungement.*

13 1. As used in this section, unless the context otherwise
14 requires:

15 *a. "Arrest"* means the same as defined in section 804.5 and
16 includes taking into custody pursuant to section 232.19.

17 *b. "Chemical test"* means a test of a person's blood or urine
18 to determine the presence of a controlled substance.

19 *c. "Intoxicated" or "intoxication"* means the condition of
20 having physical or mental control markedly diminished by the
21 effects of a controlled substance.

22 *d. "Peace officer"* means the same as defined in section
23 801.4.

24 2. A person shall not be intoxicated in a public place while
25 any amount of a controlled substance is present in the person,
26 as measured in the person's blood or urine. A person violating
27 this subsection is guilty of a simple misdemeanor.

28 3. When a peace officer arrests a person on a charge of
29 public intoxication due to a controlled substance under this
30 section, the peace officer shall inform the person that the
31 person may have a chemical test administered at the person's
32 own expense. In a prosecution for public intoxication due to
33 a controlled substance, evidence of the results of a chemical
34 test performed under this subsection is admissible upon proof
35 of a proper foundation.

1 4. *a.* A peace officer shall make a reasonable effort to
2 identify a person under the age of eighteen who violates this
3 section and refer the person to juvenile court.

4 *b.* A juvenile court officer shall notify the person's
5 custodial parent, legal guardian, or custodian of the
6 violation. In addition, the juvenile court officer shall
7 make a reasonable effort to identify the elementary or
8 secondary school the person attends, if any, and to notify the
9 superintendent of the school district or the superintendent's
10 designee, or the authorities in charge of the nonpublic school,
11 of the violation. A reasonable attempt to notify the person
12 includes but is not limited to a telephone call or notice by
13 first-class mail.

14 5. Upon the expiration of two years following conviction for
15 a violation of this section or of a similar local ordinance, a
16 person may petition the court to expunge the conviction, and if
17 the person has had no other criminal convictions, other than
18 local traffic violations or simple misdemeanor violations of
19 chapter 321 during the two-year period, the conviction shall
20 be expunged as a matter of law. The court shall enter an
21 order that the record of the conviction be expunged by the
22 clerk of the district court. Notwithstanding section 692.2,
23 after receipt of notice from the clerk of the district court
24 that a record of conviction has been expunged, the record of
25 conviction shall be removed from the criminal history data
26 files maintained by the department of public safety if such a
27 record was maintained in the criminal history data files.

28 Sec. 3. Section 124.411, subsection 3, Code 2022, is amended
29 by adding the following new paragraph:

30 NEW PARAGRAPH. *c.* An offense under section 124.401H,
31 subsection 2.

32 Sec. 4. Section 125.34, subsection 1, Code 2022, is amended
33 to read as follows:

34 1. A person with a substance-related disorder due to
35 intoxication or substance-induced incapacitation may come

1 voluntarily to a facility for emergency treatment. A person
2 who appears to be intoxicated or incapacitated by a substance
3 in a public place and in need of help may be taken to a facility
4 by a peace officer under [section 125.91](#). If the person refuses
5 the proffered help, the person may be arrested and charged with
6 intoxication under [section 123.46](#) or [124.401H](#), if applicable.

7 Sec. 5. Section 232.22, subsection 3, paragraph c,
8 subparagraph (1), unnumbered paragraph 1, Code 2022, is amended
9 to read as follows:

10 A room in a facility intended or used for the detention of
11 adults if there is probable cause to believe that the child has
12 committed a delinquent act which if committed by an adult would
13 be a felony, or aggravated misdemeanor under [section 708.2](#)
14 or [709.11](#), a serious or aggravated misdemeanor under section
15 321J.2, or a violation of [section 123.46](#) or [124.401H](#), and if
16 all of the following apply:

17 Sec. 6. Section 232.22, subsection 3, paragraph c,
18 subparagraph (2), Code 2022, is amended to read as follows:

19 (2) However, if the child is to be detained for a violation
20 of [section 123.46](#), [124.401H](#), or [section 321J.2](#), placement in
21 a facility pursuant to this paragraph "c" shall be made only
22 after an attempt has been made to notify the parents or legal
23 guardians of the child and request that the parents or legal
24 guardians take custody of the child. If the parents or legal
25 guardians cannot be contacted, or refuse to take custody of the
26 child, an attempt shall be made to place the child in another
27 facility, including but not limited to a local hospital or
28 shelter care facility. Also, a child detained for a violation
29 of [section 123.46](#), [124.401H](#), or [section 321J.2](#) pursuant to this
30 paragraph "c" shall only be detained in a facility with adequate
31 staff to provide continuous visual supervision of the child.

32 Sec. 7. Section 701.12, subsection 1, Code 2022, is amended
33 by adding the following new paragraph:

34 NEW PARAGRAPH. *0c.* Section 124.401H.

35 Sec. 8. Section 901C.3, subsection 2, Code 2022, is amended

1 by adding the following new paragraph:

2 NEW PARAGRAPH. *0c.* A conviction under section 124.401H.

3 EXPLANATION

4 The inclusion of this explanation does not constitute agreement with
5 the explanation's substance by the members of the general assembly.

6 This bill relates to intoxication by a controlled substance
7 in public places, and provides penalties.

8 The bill provides that a person shall not be intoxicated
9 in a public place while any amount of a controlled substance
10 is present in the person, as measured in the person's blood
11 or urine. A person violating the bill is guilty of a simple
12 misdemeanor. A simple misdemeanor is punishable by confinement
13 for no more than 30 days and a fine of at least \$105 but not
14 more than \$855.

15 The bill provides that a peace officer making an arrest for
16 public intoxication by a controlled substance shall inform the
17 person that the person may have a chemical test administered
18 at the person's own expense. In a prosecution for public
19 intoxication by a controlled substance, evidence of the results
20 of a chemical test performed is admissible upon proof of a
21 proper foundation.

22 The bill provides that a peace officer shall make a
23 reasonable effort to identify a person under the age of 18
24 who violates the bill and refer the person to juvenile court.
25 A juvenile court officer shall notify the person's custodial
26 parent, legal guardian, or custodian of the violation. The
27 juvenile court officer shall make a reasonable effort to
28 identify the elementary or secondary school the person attends,
29 if any, and to notify the superintendent of the school district
30 or the superintendent's designee, or the authorities in charge
31 of the nonpublic school, of the violation.

32 The bill provides that upon the expiration of two years
33 following conviction for a violation of the bill, a person may
34 petition the court to expunge the conviction, and if the person
35 has had no other criminal convictions, other than local traffic

1 violations or simple misdemeanor violations of Code chapter
2 321, the conviction shall be expunged as a matter of law.

3 The bill provides that a conviction under the bill shall be
4 considered when sentencing a person for a second or subsequent
5 offense for a violation of Code chapter 124 (controlled
6 substances).

7 The bill describes the facilities where a child detained for
8 a violation of the bill may be held.

9 The bill provides that a conviction under the bill shall
10 not be expunged after eight years under Code section 901C.3.
11 However, the bill provides that a conviction under the bill may
12 be expunged after two years.

13 The bill makes conforming Code changes.